

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

COUNTY OF ALBANY, TOWN OF
AMHERST, COUNTY OF
CATTARAUGUS, COUNTY OF
CHEMUNG, COUNTY OF CHENANGO,
COUNTY OF COLUMBIA, COUNTY OF
ERIE, COUNTY OF ESSEX, COUNTY OF
LIVINGSTON, MAGNACARE
INSURANCE, MEBCO, CITY OF MOBILE,
COUNTY OF MONROE, COUNTY OF
ONEIDA, COUNTY OF ONONDAGA,
COUNTY OF OSCEOLA, COUNTY OF
OTSEGO, CITY OF POUGHKEEPSIE,
COUNTY OF SCHUYLER, COUNTY OF
SHELBY, WCA GROUP HEALTH TRUST,
COUNTY OF YATES,

Plaintiffs,

v.

ACTAVIS HOLDCO US, INC.;
ACTAVIS ELIZABETH LLC;
ACTAVIS PHARMA, INC.;
ALVOGEN INC.;
AMNEAL PHARMACEUTICALS, INC.;
AMNEAL PHARMACEUTICALS, LLC;
APOTEX CORP.;
AUROBINDO PHARMA USA, INC.;
BAUSCH HEALTH AMERICAS, INC.;
BAUSCH HEALTH US INC.;
BARR PHARMACEUTICALS, LLC;
BRECKENRIDGE PHARMACEUTICAL,
INC.;
CAMBER PHARMACEUTICALS, INC.;
CARACO PHARMACEUTICAL
LABORATORIES LTD.;
CITRON PHARMA LLC;
DAVA PHARMACEUTICALS, LLC;
DR. REDDY'S LABORATORIES, INC.;
ENDO INTERNATIONAL PLC; FOUGERA
PHARMACEUTICALS INC.; G & W
LABORATORIES;
GENERICS BIDCO I, LLC;

Civil Action No.: 21-cv-1650

NOTICE OF REMOVAL

Removed from:

Supreme Court of the State of New York,
County of Suffolk

GLENMARK PHARMACEUTICALS, INC.;
GREENSTONE LLC;
HERITAGE PHARMACEUTICALS, INC.;
HIKMA LABS, INC.;
HIKMA PHARMACEUTICALS, USA,
INC.;
IMPAX LABORATORIES, INC.;
JUBILANT CADISTA
PHARMACEUTICALS, INC.;
LANNETT COMPANY, INC.;
LUPIN PHARMACEUTICALS, INC.;
MAYNE PHARMA USA INC.;
MORTON GROVE PHARMACEUTICALS,
INC.;
MUTUAL PHARMACEUTICAL CO., INC.;
MYLAN INC.;
MYLAN PHARMACEUTICALS, INC.;
MYLAN N.V.;
OCEANSIDE PHARMACEUTICALS, INC.;
PAR PHARMACEUTICAL, INC.;
PERRIGO NEW YORK, INC.;
PFIZER, INC.;
SANDOZ, INC.;
SUN PHARMACEUTICAL INDUSTRIES,
INC.;
TARO PHARMACEUTICALS USA, INC.;
TELIGENT INC.;
TEVA PHARMACEUTICALS USA, INC.;
TORRENT PHARMA INC.;
UDL LABORATORIES, INC.;
UPSHER-SMITH LABORATORIES, LLC;
URL PHARMA, INC.;
VALEANT PHARMACEUTICALS NORTH
AMERICA, LLC;
VALEANT PHARMACEUTICALS
INTERNATIONAL, INC.; VERSAPHARM,
INC.;
WEST-WARD COLUMBUS, INC.;
WEST-WARD PHARMACEUTICALS
CORP.;
WOCKHARDT USA LLC; and
ZYDUS PHARMACEUTICALS (USA),
INC.,

Defendants.

PLEASE TAKE NOTICE that defendants Mylan Inc., Mylan Pharmaceuticals Inc., and UDL Laboratories, Inc. (collectively, the “Mylan Defendants”) hereby remove the above-captioned action from the Supreme Court of the State of New York, County of Suffolk, to the United States District Court for the Eastern District of New York.¹ This removal arises under 28 U.S.C. §§ 1331, 1337, 1367, 1441(a), and 1446. As grounds for removal, the Mylan Defendants state as follows:

INTRODUCTION

1. On December 15, 2020, plaintiffs commenced the present action by filing a Summons and Complaint captioned *County of Albany, et al. v. Actavis Holdco US, Inc., et al.*, Index No. 619573/2020, in the Supreme Court of the State of New York, County of Suffolk (the “State Court Action”). The Summons and Complaint in the State Court Action (hereinafter “Summons and Complaint”) are collectively attached as Exhibit A.

2. The Complaint alleges causes of action against each defendant for (1) breach of Sections 1 and 3 of the Sherman Act, 15 U.S.C. §§ 1 and 3, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26; (2) breach of the Donnelly Act, New York General Business Law § 340, *et seq.*; (3) unjust enrichment under New York law; (4) breach of Alabama Antitrust Statutes, Alabama Code § 6-5-60, *et seq.*; (5) unjust enrichment under Alabama law; (6) breach of the Florida Antitrust Statutes, Florida Statutes Combinations Restricting Trade and Commerce § 542, *et seq.*; (7) unjust enrichment under Florida law; (8) breach of Tennessee Antitrust Statutes, Tennessee Code § 47-25-101, *et seq.*; (9) unjust enrichment under Tennessee law; (10) breach of the Wisconsin Antitrust statutes, Wisconsin Statutes, Trust and Monopolies § 133, *et seq.*; and (11) unjust enrichment under Wisconsin law. *See* Compl. ¶¶ 4377–4549. Against each defendant the Complaint seeks a declaratory judgment; treble damages applied jointly and severally; damages in

¹ Defendant Mylan N.V. no longer exists due to a corporate transaction.

the form of restitution and/or disgorgement; restitution, including disgorgement of profits obtained through unjust enrichment; permanent injunction; pre- and post-judgment interest; costs of suit; and any such relief the court deems just and appropriate. *Id.* at Sec. XVI.

3. The Complaint relates to and is based on a common set of factual allegations made in several other pending complaints against the same defendants related to the manufacture and/or sale of generic pharmaceuticals in the United States that have been consolidated by the Judicial Panel for Multidistrict Litigation before The Honorable Cynthia Rufe in the United States District Court for the Eastern District of Pennsylvania. The multidistrict litigation is captioned *In Re Generic Pharmaceuticals Pricing Antitrust Litigation*, Case No. 2:16-md-02724-CMR. The plaintiffs' eleven causes of action arise out of alleged antitrust violations that are at issue in that multidistrict litigation. Compl. ¶ 4.

4. On March 9, 2021, the Summons and Complaint was served on: Fougera Pharmaceuticals Inc.

5. On March 10, 2021, the Summons and Complaint was served on: Camber Pharmaceuticals, Inc.; Heritage Pharmaceuticals Inc.; Hikma Labs Inc.; Hikma Pharmaceuticals USA, Inc. (f/k/a West-Ward Pharmaceuticals Corp.); Sandoz Inc.; Upsher-Smith Laboratories, LLC; West-Ward Columbus Inc; and West-Ward Pharmaceuticals Corp. (n/k/a Hikma Pharmaceuticals USA, Inc.).

6. On March 11, 2021, the Summons and Complaint was served on: Amneal Pharmaceuticals, Inc.; Amneal Pharmaceuticals, LLC; Apotex Corp.; Breckenridge Pharmaceutical, Inc.; Dr. Reddy's Laboratories, Inc.; Glenmark Pharmaceuticals, Inc.²; Impax

² The entity named in the complaint, "Glenmark Pharmaceuticals, Inc.," does not exist. Glenmark Pharmaceuticals Inc., USA accepted service with the understanding that plaintiffs will correct their pleadings to reflect the correct entity name. In accordance with Paragraph 19 *infra*, Glenmark Pharmaceuticals Inc., USA consents to the removal of this action to federal court.

Laboratories, Inc.; Jubilant Cadista Pharmaceuticals, Inc.; Lupin Pharmaceuticals, Inc.; Mayne Pharma USA Inc.³; Morton Grove Pharmaceuticals, Inc.; Mylan Inc.; Mylan Pharmaceuticals, Inc.; Pfizer Inc.; UDL Laboratories, Inc.; and Wockhardt USA LLC.

7. On March 12, 2021, the Summons and Complaint was served on: Alvogen, Inc.; Aurobindo Pharma USA, Inc.; Bausch Health Americas, Inc.; Bausch Health US Inc.⁴; Valeant Pharmaceuticals North America LLC n/k/a Bausch Health US, LLC; Oceanside Pharmaceuticals, Inc.; Par Pharmaceutical, Inc.; and Teligent Inc.

8. On March 15, 2021, the Summons and Complaint was served on: Actavis Elizabeth LLC; Actavis Holdco US, Inc.; Actavis Pharma, Inc.; and Zydus Pharmaceuticals (USA), Inc.

9. On March 16, 2021, the Summons and Complaint was served on: DAVA Pharmaceuticals, LLC and Sun Pharmaceutical Industries, Inc.

10. On March 17, 2021, the Summons and Complaint was served on: Barr Pharmaceuticals, LLC; Lannett Company, Inc.; and Torrent Pharma Inc.

11. On March 18, 2021, the Summons and Complaint was served on: Teva Pharmaceuticals USA, Inc.

12. On March 23, 2021, the Summons and Complaint was served on: Caraco Pharmaceutical Laboratories Ltd; Citron Pharma, LLC; and Perrigo New York, Inc.

³ The entity named in the complaint, “Mayne Pharma USA Inc.,” does not exist. Mayne Pharma Inc. accepted service with the understanding that plaintiffs will correct their pleadings to reflect the correct entity name. In accordance with Paragraph 19 *infra*, Mayne Pharma Inc. consents to the removal of this action to federal court.

⁴ The entity named in the complaint, “Bausch Health US Inc.,” does not exist. Valeant Pharmaceuticals North America LLC accepted service with the understanding that plaintiffs will correct their pleadings to reflect the correct entity name. In accordance with Paragraph 19 *infra*, Valeant Pharmaceuticals North America LLC consents to the removal of this action to federal court.

13. As reflected by the docket in the State Court Action and upon information and belief, no other defendant has been served as of the filing of this notice of removal.⁵ A copy of the docket entries in the State Court Action is attached as Exhibit B. Copies of all documents filed in the State Court Action other than the Summons and Complaint are attached as Exhibit C.

THIS COURT HAS FEDERAL QUESTION AND SUPPLEMENTAL JURISDICTION

14. This Court has original federal question jurisdiction over the plaintiffs' federal antitrust claims under 15 U.S.C. § 15(a) and 28 U.S.C. §§ 1331 and 1337. Because the Sherman Act is "subject to judicial interpretation solely by the federal courts," the "federal courts have exclusive jurisdiction over federal antitrust lawsuits." *Johnson v. Nyack Hosp.*, 964 F.2d 116, 122 (2d Cir. 1992).

15. This Court possesses supplemental jurisdiction over the plaintiffs' state law claims for unjust enrichment; breach of the Donnelly Act; breach of Alabama Code § 6-5-60, *et seq.*; breach of Florida Statutes Combinations Restricting Trade and Commerce § 542, *et seq.*; breach of Tennessee Code § 47-25-101, *et seq.*; and breach of Wisconsin Statutes, Trust and Monopolies § 133, *et seq.* under 28 U.S.C. § 1367(a) because those claims are interrelated with the federal antitrust claims, arise from the same common nucleus of operative facts as the federal claims, and therefore "form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a).

⁵ On March 24, 2021, the Summons and Complaint was again served at the offices of Par Pharmaceutical, Inc. ("Par"). As noted above, Par and DAVA Pharmaceuticals, LLC had already been served. Due to remote working conditions, undersigned counsel has not yet received the additional Summons and Complaint or been able to verify the entity on which service was purportedly made on March 24th. In addition, the State Court Action docket indicates that Versapharm, Inc. was served on March 12, 2021. *See* Exhibit C at 98. However, upon information and belief, Versapharm, Inc. is in bankruptcy and therefore all lawsuits filed against that entity are subject to a mandatory stay. Finally, Valeant Pharmaceuticals International, Inc. is not an United States company, has no authorized agent for service in the United States, and has thus not been served.

16. This matter may therefore be properly removed to this Court on the basis of federal question and supplemental jurisdiction, as more fully explained below.

THE REQUIREMENTS OF 28 U.S.C. § 1446 ARE MET

17. This Notice of Removal is properly filed in the United States District Court for the Eastern District of New York because the Supreme Court for the State of New York, County of Suffolk, is located within the Eastern District of New York. Venue for removal is therefore proper because this is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 112(c).

18. Mylan Defendants were served with the Summons and Complaint on March 11, 2021 and have therefore timely filed this Notice of Removal within 30 days of being served. *See* 28 U.S.C. § 1446(b)(1), (b)(2)(B).

19. Counsel for all defendants who have been served in the State Court Action have executed this Notice of Removal, indicating their consent to the removal of this action to federal court. These defendants include: Actavis Holdco US, Inc.; Actavis Elizabeth LLC; Actavis Pharma, Inc.; Alvogen, Inc.; Amneal Pharmaceuticals, Inc.; Amneal Pharmaceuticals, LLC; Apotex Corp.; Aurobindo Pharma USA, Inc.; Barr Pharmaceuticals, LLC; Bausch Health Americas, Inc.; Bausch Health US LLC; Breckenridge Pharmaceutical, Inc.; Camber Pharmaceuticals, Inc.; Caraco Pharmaceutical Laboratories Ltd.; Citron Pharma, LLC; DAVA Pharmaceuticals, LLC; Dr. Reddy’s Laboratories, Inc.; Fougera Pharmaceuticals Inc.; Glenmark Pharmaceuticals Inc.; Heritage Pharmaceuticals Inc.; Hikma Labs Inc.; Hikma Pharmaceuticals USA, Inc. (f/k/a West-Ward Pharmaceuticals Corp.); Impax Laboratories, Inc.; Jubilant Cadista Pharmaceuticals, Inc.; Lannett Company, Inc.; Lupin Pharmaceuticals, Inc.; Mayne Pharma USA Inc.; Morton Grove Pharmaceuticals, Inc.; Mylan Inc.; Mylan Pharmaceuticals, Inc.; Oceanside

Pharmaceuticals, Inc.; Par Pharmaceutical, Inc.; Perrigo New York, Inc.; Pfizer Inc.; Sandoz Inc.; Sun Pharmaceutical Industries, Inc.; Teligent Inc.; Teva Pharmaceuticals USA, Inc.; Torrent Pharma Inc.; UDL Laboratories, Inc.; Upsher-Smith Laboratories, LLC; Valeant Pharmaceuticals North America LLC n/k/a Bausch Health US, LLC; West-Ward Columbus Inc; West-Ward Pharmaceuticals Corp. (n/k/a Hikma Pharmaceuticals USA, Inc.); Wockhardt USA LLC; and Zydus Pharmaceuticals (USA), Inc. All defendants who have been properly joined and served have therefore agreed to removal. 28 U.S.C. § 1446(b)(2)(A), (C).

20. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and true and correct copies of all process, pleadings, and orders served upon the Mylan Defendants are attached as Exhibits A–C. 28 U.S.C. § 1446(a).

21. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon counsel for the plaintiffs and a copy, along with a Notice to Clerk of Removal, will be promptly filed with the Clerk of the Supreme Court of the State of New York, County of Suffolk.

CONCLUSION

22. For the foregoing reasons, this action is properly removed to this Court.

Dated: March 26, 2021

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